

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
TD BANK, N.A.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 12-647 S
)	
NICHOLAS E. CAMBIO, et al.,)	
)	
)	
Defendants.)	
_____)	

ORDER

WILLIAM E. SMITH, Chief Judge.

On December 5, 2014, United States Magistrate Judge Lincoln D. Almond issued a Report and Recommendation ("R&R," ECF No. 68) in the above-captioned matter. Judge Almond recommended that Plaintiff TD Bank, N.A.'s motion for summary judgment against Defendants Nicholas E. Cambio and Vincent Cambio ("Defendants") be granted, because Defendants' sole defense not only failed as a matter of law, but was expressly waived in the parties' contract. Judge Almond recommended that Defendants be held jointly and severally liable for \$761,864.52, plus prejudgment interest, reasonable attorneys' fees, and costs. Defendants did not object to the R&R. Because this Court agrees with Judge Almond's analysis of Defendants' liability, it hereby accepts the R&R pursuant to 28 U.S.C. § 636(b)(1).

Now before the Court are Plaintiff's Motion for Attorney's Fees (ECF No. 69), its Bill of Costs (ECF No. 71), and its Motion for Issuance of Final Judgment (ECF No. 70). Under the Guaranty that was the focus of this action, Plaintiff is entitled to reasonable attorneys' fees. Defendants have not opposed Plaintiff's motion for attorneys' fees in the amount of \$49,072.50. The Court has reviewed the Affidavit of Armando E. Batastini documenting the fees incurred in connection with the representation of Plaintiff in this matter, and the Affidavit of Matthew T. Oliverio, a disinterested attorney admitted to practice in Rhode Island, regarding the reasonableness of the fees requested by Plaintiff's motion. The Court has also reviewed Plaintiff's costs, to which Plaintiff is entitled under Federal Rule of Civil Procedure 54(d)(1), totaling \$2,241.62. The Court finds the amount of the requested attorneys' fees and costs to be reasonable.

The only disputed issue arising from Plaintiff's Motion for Issuance of Final Judgment is the calculation of pre-judgment interest owed by Defendants. Pre-judgment interest is assessed from the date the cause of action accrued, or in other words, "the point at which [Plaintiff] was entitled to [its] money, and did not receive it." Buckley v. Brown Plastics Mach., LLC, 368 F. Supp. 2d 167, 171 (D.R.I. 2005); see also R.I. Gen. Laws § 9-

21-10; Gupta v. Customerlinx Corp., 385 F. Supp. 2d 157, 167 (D.R.I. 2005), as amended (Aug. 26, 2005). Contrary to Defendants' assertions, this date was July 30, 2010, the date Defendants defaulted on the Notes payable to Plaintiff, not the date of Plaintiff's subsequent foreclosure sale of the properties that served as collateral for Plaintiff's loan. As Plaintiff points out, the Guaranty states that Defendants are liable upon any non-payment, including a maturity default such as occurred here, and that even a failure to foreclose would not impact Plaintiff's contractual rights. Plaintiff assents to the contractual rate of interest, which according to the Affidavit of Alice Paxson, Vice President of Commercial Work-out at TD Bank, N.A., is 7%, with a per diem of \$75.17912.¹ Thus, prejudgment interest is due on the \$761,864.52 damages owed Plaintiff in the amount of \$128,255.58.

Accordingly, the R&R is ADOPTED, and Plaintiff's Motion for Attorney's Fees and its Bill of Costs are GRANTED. Plaintiff's Motion for Issuance of Final Judgment is GRANTED with respect to Plaintiff's request for prejudgment interest at a rate of 7% commencing July 30, 2010, and otherwise DENIED as moot in light of this Order. Defendants are hereby ordered to pay \$761,864.52

¹ Defendants do not set forth a specific interest rate, but state that the appropriate contractual rate is 6% plus the prime rate.

in damages, plus \$49,072.50 in attorneys' fees, \$2,241.62 in costs, and \$128,255.58 in prejudgment interest, for a total of \$941,434.22.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "WESmith", written over a horizontal line.

William E. Smith
Chief Judge
Date: March 31, 2015